Supreme Court, U.S.
FILED

091062 MAR 3 - 2010

OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

LISA MASSAD,

Respondent,

v.

SARAH GREAVES,

Petitioner.

On Petition for a Writ of Certiorari to the Supreme Court for the State of Connecticut

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Petition for a Writ of Certiorari

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QUESTION PRESENTED

Whether the State Courts lack subject matter jurisdiction to award attorneys fees under statutory authority created by Congress in Article III courts exclusively and incurred at the U.S. District Court in removal and remand proceedings pursuant to 28 U.S. Code section 1447?

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the Supreme Court of the State of Connecticut.

The petitioner here and appellant below is Sarah Greaves.

The appellee below and the respondent here is Lisa Massad.

CORPORATE DISCLOSURE STATEMENT

Pursuant to 29.6 the petitioner states as follows:

The petitioner, Sarah Greaves hereby discloses that she is an individual person and as such corporate disclosure is not applicable.

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The order of the Supreme Court for the State of Connecticut in Doc. No. PSC 09-0163 denying reconsideration En Banc dated December 9, 2009 and having notice sent on December 10, 2009 is not yet reported and is reprinted in the Appendix to this Petition at 2a.

The opinion of the Appellate Court for the State of Connecticut Doc. No. A.C. NO. 30194 is not yet reported and is reprinted in the Appendix to this Petition at 3a -19a.

JURISDICTION

The Supreme Court for the State of Connecticut, Doc. No. PSC 09-0163 and dated October 14, 2009, denied the petitioners' certification to appeal from the Appellate Court. Upon request for reconsideration the Supreme Court for the State of Connecticut entered its order denying reconsideration En Banc of the petitioner's certification for writ of certiorari on December 9, 2009 and having notice sent on December 10, 2009. This Court has jurisdiction under 28 U.S.C. section 1257.

STATUTES AND PROVISIONS INVOLVED

This case involves provisions of 28 U.S. Code section 1446 et seq. the removal and remand statutes from State Courts to U.S. District Courts and Article III and Article IV, the Supremacy Clause of the United States Constitution . The pertinent provisions are reproduced in the Appendix to this Petition 20a-27a.

STATEMENT OF THE CASE

This is an important case concerning the interaction of State and Federal Courts and the U.S. District Court's ability to transfer its responsibilities to a state court in remand orders that are authorized by Congress by Article III of the United States Constitution in exclusively federal proceedings such as 28 U.S. Code section 1447, the remand statute. The issue then explores whether a State Court has subject matter jurisdiction to act in such a case as Congress can only confer subject matter jurisdiction upon the Federal Courts in Article III matters. Therefore, the state trial court's ability to act on these matters is at issue. The petitioner argues that a U.S. District Court cannot confer jurisdiction upon a state court to perform its duties nor can it order a state court to perform U.S. District Court responsibilities that were exclusively placed upon them by Congress through legislation. This is in contrast to the

opinion of the Appellate Court for the State of Connecticut which opined that the U.S. District Courts and the State Courts have concurrent jurisdiction over issues of remand pursuant to 28 U.S. Code section 1447 and that the Supremacy Clause of the United States Constitution prevented the State Court from carrying out the U.S. District Court's orders placed upon it in the remand order.

Further, the petitioner argues that, if the state trial court had subject matter jurisdiction to act then it violated her substantive and procedural due process rights in not allowing a hearing on the issue of attorneys' fees that were incurred in proceedings in the U.S. District Court.

Further, the Appellate Court for the State of Connecticut noted that it was without articulation of the trial court that may have been necessary to determine the issue of subject matter jurisdiction and the articulation was never requested. The Appellate Court for the State of Connecticut should have ordered the case remanded to the trial court for any articulation that it required, pursuant to Bender v. Williamsport Area Sch. Dist., 475 U.S. 534 (1986) for the purpose of resolving any subject matter jurisdiction issues as Bender requires the presiding court to satisfy itself of jurisdiction and not avoid any facts that it requires to resolve the issue. Subject matter jurisdiction resolution is the only known procedure in which the court acts independently of the parties as it is a prelude to due process considerations and court self satisfaction in these matters is different than due process.

Further, the presiding court's procedure in determining subject matter jurisdiction under the requirement of Bender is an exception to its duty pursuant to the Code of Judicial Conduct Canon 3 (4) unless it violates the parties right to review of subject matter jurisdiction by another relevant court or it cause a deprivation of life, liberty or property before all avenues of review of subject matter jurisdiction have been exhausted.

The plaintiff, Lisa Massad ("Massad"), obtained a stipulated judgment in another Superior Court case in Connecticut against Thomas Greaves, the father of the defendant, Sarah Greaves ("Greaves") in 2002. Defendant Greaves was one of two attorneys of record for Thomas Greaves in that case. After failing in her attempts to collect the aforementioned debt against Thomas Greaves, Massad filed this case in a two count complaint against the defendant Greaves in the Superior Court for the State of Connecticut in which she alleges that she was attempting to serve post-judgment interrogatories upon Thomas Greaves and that the defendant Greaves told the serving marshal false information as to the location of Thomas Greaves. In the first count Massad alleged that the action is an interference with a business/ contract relationship that she had with Thomas Greaves in that she was attempting to collect a judgment against him and, as such, the first count is based upon a common law action of tortious interference with a contract. The second count states that there was a judgment in favor of Massad and against Thomas Greaves. Further, the second count alleges that the defendant

Greaves was an attorney representing Thomas Greaves in the 2002 case in which Massad obtained a money judgment against him. Also, there are allegations of defamation in that the defendant Greaves made false statements to Attorney Jeremiah Donovan about Massad's lawyer that prompted the lawyer to cease work on collecting the debt owed on the judgment after Attorney Donovan filed complaints with inter alia local police and the U.S. Post Office divulging written extortion that was being used against the defendant Greaves by Massad's attorney. The defendant Greaves filed with her answer three counterclaims based upon abuse of process, defamation and violation of the Fair Debt Collection Act.

During the discovery process, it was found that defendant Greaves did not make false statements about Massad's attorney and as such her cause of action was completely preempted by Federal Law. Massad pled her causes of action under the guise of a state law claim when it was actually based upon the actions of Attorney Donovan in his compliance with 18 U.S.C. section 4 in that he reported felonious conduct to the proper authorities.

At this point in the discovery procedure it was apparent that the plaintiff's claims would be barred by 18 U.S.C section 4, in that Attorney Jeremiah Donovan's actions, as alleged, were done to conform to said statute and to avoid a misprision of felony as stated in said statute. Once this information was discovered, Greaves removed the case to the U. S. District Court in

Connecticut and motioned the court to disqualify Massad's attorneys.

Massad objected to the removal. The U.S. District Court then remanded the case back to the Superior Court for the State of Connecticut without considering any of the matters before it and ordered the Superior Court to award attorneys fees to Massad for the work performed on the case in the U.S. District Court.

Massad moved for attorneys fees concerning the U.S. District Court proceedings in the Superior Court ("the trial court"). The defendant Greaves objected to the motion for attorneys fees. Further, defendant Greaves moved, at the same time, to disqualify the attorneys representing Massad.

The trial court was preoccupied with the motion to disqualify Massad's attorneys and indicated that it would address that issue before any of the other motions and that it would hold a hearing on the other matters at a later time. Contrarily, the trial court in its later written decision denied the motion to disqualify Massad's attorneys without prejudice in that a hearing would be required to disqualify similar to that used to disqualify her previous attorney. At the same time, the trial court awarded Massad attorneys fees for the removal and remand of the case in the U.S. District Court, again without a hearing. The defendant Greaves appealed the trial court's award of attorney's fees in an interlocutory appeal based upon subject matter jurisdiction and Due Process.

The Appellate Court for the State of Connecticut found that this matter was proper

for appeal in that the interlocutory appeal was from the award of attorney fees by the Superior Court, the trial court, which terminated a separate and distinct proceeding, that being the removal and remand proceeding in the U.S. District Court pursuant to 28 U.S. Code section 1447. The Appellate Court, in plenary review, upheld the trial court's award of attorneys fees and found that the Superior Court, the trial court, had concurrent subject matter jurisdiction over the award of attorney's fees in the remand action. However, the appellate court made several erroneous factual and legal determinations during its inquiry leading it to an improper determination that the Superior Court had jurisdiction. These errors include the Appellate Court's ruling of concurrent jurisdiction in matters that are exclusively within the jurisdiction of the Federal Article III courts and that the Supremacy Clause of the United States Constitution prohibited the State trial court from refusing jurisdiction over Federal claims including this remand order. Further, the Appellate court made erroneous conclusions as to the defendant Greave's appellate rights in the Federal court system. It decided that Federal appellate rights eliminated the need for the State Court to afford litigants due process rights in matters before it.

The defendant Greaves petitioned the Supreme Court for the State of Connecticut for certiorari of the Appellate Court decision.

The Supreme Court for the State of Connecticut in Doc. No. PSC 09-0163 and dated October 14,

2009, denied the petitioners' certification to appeal from the Appellate Court.

The defendant Greaves petitioned the Supreme Court for the State of Connecticut for reconsideration En Banc for certiorari of the Appellate Court decision.

The Supreme Court for the State of Connecticut in Doc. No. PSC 09-0163 denied reconsideration En Banc dated December 9, 2009.

The petitioner now files this petition for certiorari with the United States Supreme Court.

A. FACTUAL BACKGROUND

The plaintiff, Lisa Massad ("Massad"), obtained a stipulated judgment in another Superior Court case in Connecticut against Thomas Greaves, the father of the defendant, Sarah Greaves ("Greaves") in 2002. Defendant Greaves was one of two attorneys of record for Thomas Greaves in that case. After failing in her attempts to collect the aforementioned debt against Thomas Greaves, Massad filed this case in a two count complaint against the defendant Greaves in the Superior Court for the State of Connecticut in which she alleges that she was attempting to serve post-judgment interrogatories upon Thomas Greaves and that the defendant Greaves told the serving marshal false information as to the location of Thomas Greaves. In the first count Massad alleged that the action is an interference with a business/ contract relationship that she had with Thomas Greaves in that she was attempting to collect a judgment

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Massad moved for attorneys fees concerning the U.S. District Court proceedings in the Superior Court ("the trial court"). The defendant Greaves objected to the motion for attorneys fees. Further, defendant Greaves moved, at the same time, to disqualify the attorneys representing Massad.

The trial court was preoccupied with the motion to disqualify Massad's attorneys and indicated that it would address that issue before any of the other motions and that it would hold a hearing on the other matters at a later time. Contrarily, the trial court in its later written decision denied the motion to disqualify Massad's attorneys without prejudice in that a hearing would be required to disqualify similar to that used to disqualify her previous attorney. At the same time, the trial court awarded Massad attorneys fees for the removal and remand of the case in the U.S. District Court, again without a hearing. The defendant Greaves appealed the

trial court's award of attorney's fees in an interlocutory appeal based upon subject matter jurisdiction and Due Process.

The Appellate Court for the State of Connecticut found that this matter was proper for appeal in that the interlocutory appeal was from the award of attorney fees by the Superior Court, the trial court, which terminated a separate and distinct proceeding, that being the removal and remand proceeding in the U.S. District Court pursuant to 28 U.S. Code section 1447. The Appellate Court, in plenary review, upheld the trial court's award of attorneys fees and found that the Superior Court, the trial court, had concurrent subject matter jurisdiction over the award of attorney's fees in the remand action. However, the appellate court made several erroneous factual and legal determinations during its inquiry leading it to an improper determination that the Superior Court had jurisdiction. These errors include the Appellate Court's ruling of concurrent jurisdiction in matters that are exclusively within the jurisdiction of the Federal Article III courts and that the Supremacy Clause of the United States Constitution prohibited the State trial court from refusing jurisdiction over Federal claims including this remand order. Further, the Appellate court made erroneous conclusions as to the defendant Greave's appellate rights in the Federal court system. It decided that Federal appellate rights eliminated the need for the State Court to afford litigants due process rights in matters before it.

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The defendant Greaves petitioned the Supreme Court for the State of Connecticut for reconsideration En Banc for certiorari of the Appellate Court decision.

The Supreme Court for the State of Connecticut in Doc. No. PSC 09-0163 denied reconsideration En Banc dated December 9, 2009.

The petitioner now files this petition for certiorari with the United States Supreme Court.

REASONS FOR GRANTING THE PETITION

The issue presented in this petition effects the interaction of State and Federal Courts and the U.S. District Court's ability to transfer its responsibilities to a state court in remand orders that are authorized by Congress in exclusively federal proceedings pursuant to 28 U.S. Code section 1447. The issue then explores whether a State Court has subject matter jurisdiction to act in such a case as Congress is the entity to confer subject matter jurisdiction upon the Federal Court's only. Therefore, the state trial court's ability to act on these matters is at issue. The petitioner argues that a Federal Court cannot confer jurisdiction upon a state court to perform its duties nor can it order a state court to perform

U.S. District Court responsibilities that were exclusively placed upon them by Congress through legislation.

Further, the petitioner argues that, if the state trial court had subject matter jurisdiction to act then it violated her substantive and procedural due process rights in not allowing a hearing on the issue of attorneys' fees that were incurred in proceedings in the U.S. District Court.

Further, the Appellate Court for the State of Connecticut noted that it was without articulation of the trial court that may have been necessary to determine the issue of subject matter jurisdiction and the articulation was never requested. The petitioner argues that the Appellate Court for the State of Connecticut should have ordered the case remanded to the trial court for any articulation that it required, pursuant to Bender v. Williamsport Area Sch. Dist., 475 U.S. 534 (1986) for the purpose of resolving any subject matter jurisdiction issues as Bender requires the presiding court to satisfy itself of jurisdiction and not avoid any facts that it requires to resolve the issue. Subject matter jurisdiction resolution is the only known procedure in which the court acts independently of the parties as it is a prelude to due process considerations and court self satisfaction in these matters is different than due process.

CONCLUSION

In order to preserve the subject matter jurisdiction, which was created by Congress pursuant to Article III, exclusively within the U.S. District Courts and the Federal Court System in general this court needs to address the issue presented and this writ for certiorari should be granted.

Respectfully submitted,

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APPENDIX

SUPREME COURT

STATE OF CONNECTICUT

NO. PSC-09-0163

Lisa K. Massad

v.

Sarah J. Greaves

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiffs for certification to appeal from the Appellate Court (AC 30194), it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT

L. JEANNE DULLEA
ASSISTANT CLERK-APPELLATE

Dated: 10/14/09

SUPREME COURT

STATE OF CONNECTICUT

NO. AC 30194

Lisa K. Massad

v.

Sarah J. Greaves : DECEMBER 9, 2009

ORDER

THE MOTION OF THE DEFENDANT-APPELLANT, FILED OCTOBER 26, 2009 , FOR RECONSIDERATION EN BANC PURSUANT TO P.B. 71-5, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED DENIED.

BY THE COURT

L. JEANNE DULLEA
ASSISTANT CLERK-APPELLATE

Notice sent: DECMBER 10, 2009

LISA K. MASSAD
v.
SARAH J. GREAVES
(AC 30194)

Gruendel, Beach and Peters, Js.
Argued June 3—officially released August 25, 2009
(Appeal from Superior Court, judicial district of New London, Abrams, J.)
Richard M. Franchi, for the appellant (defendant).
Jeffrey C. Ankrom, for the appellee (plaintiff).
Opinion
PETERS, J. If a lawsuit has been improperly removed from a state court to a federal court, federal law requires the federal court to order a remand and authorizes the federal court to make an award of costs and attorney's fees. See 28 U.S.C. § 1447 (c).[1]

In the present case, the federal court made an award of attorney's fees and costs but directed that the supporting documentation justifying the amount of such award be submitted to the state court after the remand. The defendant has appealed from the consequent award of fees to the plaintiff. Because the doctrine of res judicata prohibits the relitigation of a claim determined upon a full and fair consideration of the merits "by a court of competent jurisdiction . . . in the same or *any other judicial tribunal of concurrent jurisdiction*"; (emphasis added)

Wade's Dairy, Inc. v. *Fairfield*, 181 Conn. 556, 559, 436 A.2d 24 (1980); we affirm the judgment of the trial court.

On July 19, 2006, the plaintiff, Lisa K. Massad, instituted this action in the Superior Court, alleging that the defendant, Sarah J. Greaves, had wrongfully interfered with her attempt to collect a judgment against the defendant's father.[2] In response, the defendant filed a number of special defenses and a counterclaim, including a claim that the plaintiff had violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.[3] On November 30, 2007, before any of these claims had been adjudicated, the defendant removed the case to the United States District Court for the District of Connecticut. The District Court, after concluding that the defendant's removal was "untimely and without any legal basis," held that the defendant was required to pay the plaintiff the costs and attorney's fees attendant to the latter's successful remand motion. In the same order, the court remanded the case to allow the plaintiff to "submit her affidavit of fees and costs sought . . . to the Connecticut Superior Court . . . ." The defendant did not file an appeal from that order to the United States Court of Appeals for the Second Circuit.

On May 8, 2008, in accordance with the remand order from the District Court, the plaintiff filed, in the trial court, a motion for attorney's fees supported by an itemization of fees. On May 28, 2008, the defendant filed an objection to this motion in which she maintained that the court

lacked subject matter jurisdiction to award such fees, principally because, in the defendant's view, the District Court retained exclusive jurisdiction over any award of attorney's fees in this case.[4] On July 22, 2008, without issuing a memorandum of decision, the court granted the plaintiff's motion for attorney's fees in the requested amount of $4833.78. The defendant did not request an articulation under Practice Book § 66-5.

The defendant's appeal from the judgment of the trial court ordering payment of attorney's fees to the plaintiff raises two issues. The defendant claims that the court (1) lacked subject matter jurisdiction and (2) violated her constitutional right to due process by awarding the fees without a hearing and without making a finding of bad faith by the defendant. We disagree.

I

The defendant's principal claim at the trial court, and on appeal, challenges the court's subject matter jurisdiction to award attorney's fees to the plaintiff. In the defendant's view, despite the unequivocal language of the District Court's remand order, only that court had jurisdiction to make such an award. We are not persuaded.[5]

Whether the trial court had subject matter jurisdiction to grant the plaintiff's motion for attorney's fees is a question of law that warrants plenary review by this court. "We have long held that because [a] determination regarding a trial court's subject matter jurisdiction is a question of law, our review is plenary. . . .

Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction . . . ." (Internal quotation marks omitted.) *Ferguson Mechanical Co.* v. *Dept. of Public Works*, 282 Conn. 764, 770–71, 924 A.2d 846 (2007).

The defendant's jurisdictional challenge is addressed only to the court's award of attorney's fees. Significantly, she has not clearly articulated any challenge to the validity of the underlying conclusion of the District Court that she improperly removed the case. She argues instead that once the District Court decided that an award of attorney's fees was warranted, that court should have made the award rather than ordering the trial court to find the amount of fees to which the plaintiff was entitled. In other words, she questions the authority of the trial court to award attorney's fees for an improper invocation of federal jurisdiction, even where the District Court decided that the plaintiff was entitled to the award.

A

It is well established that, in the absence of congressional intent to vest exclusive jurisdiction over a particular matter in the federal courts, state courts have concurrent jurisdiction over a matter arising under federal law. The United States Supreme Court "has long made clear that federal law is as much the law of the several States as are the laws passed by their

legislatures. Federal and state law 'together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent.' *Claflin* v. *Houseman*, 93 U.S. 130, [137], 23 L. Ed. 833 (1876) . . . ." (Citations omitted.) *Haywood* v. *Drown*, U.S. , 129 S. Ct. 2108, 2114, 173 L. Ed. 2d 920 (2009). Furthermore, the supremacy clause of the United States constitution [6] prohibits states from refusing jurisdiction over federal claims when state courts have jurisdiction to hear analogous suits. Id., 2117 n.6 (citing *Testa* v. *Katt*, 330 U.S. 386, 388, 394, 67 S. Ct. 810, 91 L. Ed. 967 [1947], for proposition that state law claim over which state does exercise jurisdiction need not be identical to federal claim that state seeks to exclude).

The federal removal statute, 28 U.S.C. § 1446 (d),[7]provides that, upon removal, "the State court shall proceed no further unless and until the case is remanded." When, however, a certified copy of a remand to state court is mailed to the state court clerk, 28 U.S.C. § 1447 (c) authorizes the state court to proceed again with the case. See *Ins. Co. of Pennsylvania* v. *Waterfield*, 102 Conn. App. 277, 283, 925 A.2d 451 (2007) (under plain language of 28 U.S.C. § 1447, state court has subject matter jurisdiction to proceed as soon as remand effected).

The defendant's argument that only the District Court had jurisdiction to award attorney's fees to the plaintiff relies on a number of federal cases that have held that the District Court *may* make an award of attorney's fees even after a case has been remanded to the state court. See, e.g. *United States ex. rel. Grynberg* v. *Praxair, Inc.*, 389 F.3d 1038 (10th Cir. 2004), cert. denied, 545 U.S. 1139, 125 S. Ct. 2964, 162 L. Ed. 2d 888 (2005); *Hart* v. *Wal-Mart Stores, Inc.*, 360 F.3d 674 (7th Cir. 2004); *Husko* v. *Geary Electric, Inc.*, 316 F. Sup. 2d 664 (N.D. Ill. 2004). These cases do not advance the defendant's argument. Their holdings relate to the authority of the federal District Court to exercise jurisdiction over attorney's fees under 28 U.S.C. § 1447 (c), and they do not address the jurisdiction of the state courts to enforce an order by the federal court after a remand pursuant to that statute. In short, we have found no case, and the defendant has cited none, suggesting that Congress intended § 1447 (c) to preempt state law and to make the federal court the exclusive forum for the determination of the amount of attorney's fees that are an appropriate sanction for an improper removal of a state case.

In the alternative, the defendant maintains that the exercise of jurisdiction by the trial court in this case was improper in view of federal case law that requires the District Court to exercise its discretion to determine whether an improper removal of a case from a state court warrants an award of attorney's fees and costs to the opposing

party. That argument presupposes that the district court failed to exercise such discretion in this case. The record of the District Court proceedings establishes the opposite.[8] The District Court expressly followed the principles recently articulated by the United States Supreme Court in *Martin* v. *Franklin Capital Corp.*, 546 U.S. 132, 140–41, 126 S. Ct. 704, 163 L. Ed. 2d 547 (2005), in rendering its judgment that the circumstances of the removal in this case warranted an award of attorney's fees and costs. If the defendant wanted to challenge the manner in which the District Court exercised its discretion, the defendant could have filed an appeal from the District Court's order in the Second Circuit. See *Bryant* v. *Britt*, 420 F.3d 161 (2d Cir. 2005).

B

Under the governing principles of federal law, the remand order of the District Court again vested jurisdiction over the proceedings in this case in the trial court.[9] Such jurisdiction is buttressed by the well established principle that, as a general matter, state trial courts have the competence to determine a reasonable figure for an award of attorney's fees. The trial court is a court of general jurisdiction that regularly determines appropriate awards for fees and costs. "Courts have a general knowledge of what would be a reasonable attorney's fee for services which are fairly stated and described. . . . [C]ourts may rely on their general knowledge of what has occurred at the proceedings before them to supply evidence in support of an award

of attorney's fees. . . . The court [is] in a position to evaluate the complexity of the issues presented and the skill with which counsel had dealt with these issues." (Citation omitted; internal quotation marks omitted). *Miller* v. *Kirshner*, 225 Conn. 185, 201, 621 A.2d 1326 (1993). The defendant has offered no argument that the court lacked competence to make the requisite finding under the circumstances of this case; rather, the defendant has argued that under the "American rule," the court had limited authority to award attorney's fees. "The general rule of law known as the 'American rule' is that attorney's fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent a contractual or statutory exception. . . .Connecticut adheres to the American rule. . . . There are few exceptions." (Citations omitted; internal quotation marks omitted.) *24 Leggett Street Ltd. Partnership* v. *Beacon Industries, Inc.*, 239 Conn. 284, 311, 685 A.2d 305 (1996). Although the record does not reveal whether the court found that any other exception to the "American rule" applied, the court implicitly gave preclusive effect to the finding by the District Court that, under federal law, the plaintiff is entitled to receive attorney's fees and costs. In *Albahary* v. *Bristol*, 276 Conn. 426, 886 A.2d 802 (2005), our Supreme Court held that the doctrine of collateral estoppel, a relative of res judicata, precluded litigation in state court of an issue previously decided by a federal court. See also

Kline v. *Burke Construction Co.*, 260 U.S. 226, 230, 43 S. Ct. 79, 67 L. Ed. 226 (1922) (where federal and state courts have concurrent jurisdiction over questions of personal liability "[e]ach court is free to proceed in its own way and in its own time . . . . Whenever a judgment is rendered in one of the courts and pleaded in the other, the effect of that judgment is to be determined by the application of the principles of res adjudicata by the court in which the action is still pending . . . ."). Pursuant to the doctrine of res judicata, the court properly gave preclusive effect to the award of attorney's fees and did not need to find a distinct state law exception to the "American rule" to order payment of attorney's fees.

We conclude, therefore, that the trial court had jurisdiction in this case to order the defendant to pay attorney's fees and costs to the plaintiff in accordance with the District Court's order of remand. Applying principles of concurrent jurisdiction and res judicata, it was bound to honor the District Court's ruling that as a matter of law, the plaintiff was entitled to recover fees and costs. It was authorized, thereafter, as a court of general jurisdiction, to determine the sole issue remaining on the motion for attorney's fees—the amount of the plaintiff's recovery.

II

The defendant next claims that the trial court violated her right to procedural due process under the fourteenth amendment to the United States constitution by awarding attorney's fees to

the plaintiff without making a finding that the defendant removed the case to federal court in bad faith and without holding an evidentiary hearing. The plaintiff contests the validity of both claims.

We agree with the plaintiff.

A

The defendant maintains that, as a matter of law, the trial court had no authority to make an award of attorney's fees without a factual finding that the defendant removed the case to the District Court in bad faith.

The defendant's due process argument is unpersuasive because it rests on two related assumptions that are unsustainable. The first assumption is that the defendant was unable to raise this argument by way of appeal from the order of the District Court. The defendant has offered no factual or legal basis for this assumption. The second assumption is that, although no appeal was filed with the Second Circuit, an attack on a judgment grounded on a due process claim permits a collateral attack on a judgment that would otherwise be res judicata. That argument, too, cannot succeed.

The issue of whether the doctrine of res judicata is applicable to the facts of the present case is a question of law. Accordingly, our review is plenary. See *Gaynor* v. *Payne*, 261 Conn. 585, 595, 804 A.2d 170 (2002). The issue, in this case, is whether the court had the authority to reconsider the merits of the order of the District Court entitling the plaintiff to an award of attorney's fees relating to the defendant's

improper removal of the case. Our case law is directly to the contrary. In *CFM of Connecticut, Inc.* v. *Chowdhury*, 239 Conn. 375, 685 A.2d 1108 (1996), overruled in part on other grounds by *State* v. *Salmon*, 250 Conn. 147, 154–55, 735 A.2d 333 (1999) (en banc), our Supreme Court held that "[t]he fact that a prior judicial determination may be flawed . . . is ordinarily insufficient, in and of itself, to overcome a claim that otherwise applicable principles of res judicata preclude it from being collaterally attacked. . . . If the judgment [in the prior action] is erroneous, the unsuccessful party's remedy is to have it set aside or reversed in the original proceedings."[10] (Citations omitted; internal quotation marks omitted.) Id., 395. Federal law does not permit appellate review of an order remanding to state court a case that has been improperly removed. Under 28 U.S.C. § 1447 (d), "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise . . . ." Considering the unappealability of an order to remand, the Second Circuit, in dicta, has noted that application of res judicata to issues decided by the federal court in an order to remand might not be appropriate in state court. *MediSys Health Network, Inc.* v.*Local 348-S United Food & Commercial Workers*, 337 F.3d 119, 124 (2d Cir. 2003). No such concern exists with regard to fees and costs, however, because that determination is appealable as an issue that is collateral to the remand order. *Bryant* v. *Britt*, supra, 420 F.3d 161; see also *Stallworth* v. *Greater*

Cleveland Regional Transit Authority, 105 F.3d 252, 255 (6th Cir. 1997). The defendant has advanced no persuasive reason under state law to warrant our reversal of the judgment of the trial court. "The doctrines of res judicata and collateral estoppel protect the finality of judicial determinations, conserve the time of the court, and prevent wasteful relitigation. . . . [T]he doctrine of res judicata . . . [provides that] a former judgment on a claim, if rendered on the merits, is an absolute bar to a subsequent action [between the same parties or those in privity with them] on the same claim. . . . Accordingly, the salient inquiry is whether the present matter involves the same claim that was litigated in the prior action." (Citations omitted; internal quotation marks omitted). *Twenty-Four Merrill Street Condominium Assn., Inc.* v. *Murray*, 96 Conn. App. 616, 619, 902 A.2d 24 (2006).

Because, in this case, that inquiry must be answered in the affirmative, we affirm the judgment of the trial court.

B

The defendant's remaining due process claim asserts that she had a right to an evidentiary hearing on the amount of the plaintiff's attorney's fees.[11] The plaintiff maintains that the defendant never pursued such a claim at the trial court. Our appraisal of the merits of the defendant's claim is impaired by the defendant's failure to comply with her responsibility to provide an adequate record. See Practice Book § 60-5. The plaintiff alleges that, at the trial court,

the defendant never challenged the reasonableness of the fees that the plaintiff sought to recover or the propriety of her documentation. The defendant has not filed with this court either a memorandum of decision or a signed transcript of the relevant proceedings.[12] The defendant did not file a motion for articulation; see Practice Book §§ 60-5 and 66-5; to enable the court to fill in these gaps. In short, we do not know what issues the court addressed or how it resolved them, and, therefore, any other attacks by the defendant on the judgment of the trial court have no basis in the record. Because the defendant has failed to establish where in the record the court was clearly apprised of this claim or how it ruled on its merits, this claim warrants no further consideration, as it has been inadequately briefed. See *Eremita* v. *Morello,* 111 Conn. App. 103, 107, 958 A.2d 779 (2008).

In sum, we conclude that the trial court properly awarded the plaintiff attorney's fees and costs, as ordered by the District Court. The principle of res judicata precludes the defendant from relitigating the question of whether the plaintiff is entitled to receive such fees.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] Section 1447 (c) of title 28 of the United States Code provides in relevant part: "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and

any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case."

[2] The plaintiff alleged in the complaint that in attempting to collect moneys owed under a stipulated judgment from an action against Thomas Greaves, the defendant's father, the plaintiff sought to serve Thomas Greaves with postjudgment interrogatories. The plaintiff further alleged that the defendant interfered with the plaintiff's collection efforts by falsely informing the marshal attempting to serve Thomas Greaves that he no longer resided in the state and by making false allegations about the plaintiff to various law enforcement and regulatory officials.

[3] In her counterclaim, the defendant alleged that the plaintiff committed an abuse of process by bringing this action to collect a debt owed by a third party. She further claimed that the plaintiff defamed her by alleging that the defendant made false statements to the marshal. Finally, the defendant alleged that the plaintiff engaged in wrongful collections practices when she sent a letter to the defendant threatening to bring charges and to file grievances if the debt was not paid.

[4] The defendant also argued that the court lacked subject matter jurisdiction because the District Court did not find that the defendant had acted in bad faith.

[5] Neither party has questioned the jurisdiction of this court to hear the defendant's appeal. We agree that the award of attorney's fees in this case is a final judgment that is immediately appealable because the award terminated a separate and distinct proceeding. See *Briggs* v. *McWeeny*, 260 Conn. 296, 314, 796 A.2d 516 (2002); *State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d566 (1983); see also *Paranteau* v. *DeVita*, 208 Conn. 515, 523, 544 A.2d 634 (1988).

[6] The constitution of the United States, article six, cl. 2, provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

[7] Section 1446 (d) of title 28 of the United States Code provides: "Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect removal and the State court shall proceed no further unless and until the case is remanded."

[8] Even if this court disagreed with the legal standards relied on by the District Court, or otherwise disagreed with its reasoning or conclusions, we would have no authority to overturn that ruling.

[9] Other state courts have reached the same conclusion under similar factual circumstances. See, e.g., *Abels* v. *Ungarino & Eckert, LLC*, 951 So. 2d 318 (La. App. 2006), cert. denied, 951 So. 2d 1106 (La. 2007). Indeed, federal District Courts in other jurisdictions have found it appropriate to reserve for the state court the question of a specific amount for fees and costs where the District Court has already determined that an award of fees is necessary under 28 U.S.C. § 1447 (c). See *Hodach* v. *Caremark RX, Inc.*, 374 F. Sup. 2d 1222, 1226 (N.D. Ga. 2005).

[10] On the merits of the defendant's claim, we note that the defendant's criticism of the District Court's failure to make a finding of bad faith fails to take into account the changes in the relevant standard articulated in *Martin* v. *Franklin Capital Corp.*, 546 U.S. 132, 140–41, 126 S. Ct. 704, 163 L. Ed. 2d 547 (2005).

[11] The defendant also argues that her due process rights were violated because the trial court did not determine whether she acted in bad faith before holding her liable for the plaintiff's attorney's fees. We have no basis in the record for reviewing this claim, as the trial court did not address it and the defendant did not request an articulation under Practice Book § 66-5.

[12] The defendant has cited, in her appendix, her request to the court, at the conclusion of the July 21, 2008 hearing on the plaintiff's motion for attorney's fees, that "as far as attorney's fees are concerned . . . if in fact that the court is going to rule on that, that we do get a hearing on it

based upon what is going on." The record contains no judicial response to this request.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Article III of the United States Constitution

Section. 1. The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — *between a State and Citizens of another State* [Modified by Amendment XI]; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section. 3. Treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article VI of the United States Constitution

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

28 USC § 1446

Procedure for Removal

Sec. 1446. Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or

criminal prosecution from a State court shall file in the district court
of the United States for the district and division within which such
action is pending a notice of removal signed pursuant to Rule 11 of the
Federal Rules of Civil Procedure and containing a short and plain
statement of the grounds for removal, together with a copy of all
process, pleadings, and orders served upon such defendant or defendants
in such action.

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

(c)(1) A notice of removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

(2) A notice of removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds which exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

(3) The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.

(4) The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

(5) If the United States district court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be

held promptly and after such hearing shall make such disposition of the prosecution as justice shall require. If the United States district court determines that removal shall be permitted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.

(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.

(f) With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

28 USC § 1447

Sec. 1447. Procedure after removal generally

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.

A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from

which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.